

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

THOMAS R.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. 2:19-cv-02053-BAT

**ORDER REVERSING AND  
REMANDING FOR FURTHER  
ADMINISTRATIVE PROCEDURES**

Plaintiff Thomas R. seeks review of the denial of his application for Supplemental Security Income and Disability Insurance Benefits. He contends the ALJ erred by failing to find his back impairment severe and misevaluating several consulting and examining doctors' opinions. Dkt. 19. The Court **REVERSES** the Commissioner's final decision and **REMANDS** the matter for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

**DISCUSSION**

**A. Back impairment**

Plaintiff argues that the ALJ erred by finding his back impairment was not severe. Dkt. 19 at 6. At step two, a claimant must make a threshold showing that (1) he has a medically determinable impairment or combination of impairments and (2) the impairment or combination of impairments is severe. *See Bowen v. Yuckert*, 482 U.S. 137, 146 (1987); 20 C.F.R.

1 § 404.1520(c), 416.920(c). An impairment or combination of impairments can be found “not  
2 severe” only if the evidence establishes a slight abnormality that has no more than a minimal  
3 effect on an individual’s ability to work. *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996).  
4 The step-two inquiry has been characterized as “a *de minimis* screening device to dispose of  
5 groundless claims.” *Id.*

6 The ALJ found the record supported a finding that plaintiff had a history of spinal  
7 disorders beginning with a 2004 motor vehicle accident. Tr. 17. The ALJ found that although  
8 plaintiff did not report a significant triggering event, multilevel degenerative changes revealed in  
9 a July 2018 MRI supported a finding that he had a medically determinable spinal disorder. Tr.  
10 18. However, the ALJ further found that plaintiff typically presented with normal, waxing and  
11 waning, or perhaps exaggerated signs, which the ALJ found to suggest that his back disorders  
12 did not seriously impact his ability to engage in basic work activities. *Id.* The ALJ also found  
13 that, given the date of the July 2018 MRI, this impairment did not satisfy the one-year durational  
14 requirement.<sup>1</sup> The ALJ therefore found plaintiff’s back impairment to be non-severe, but  
15 nevertheless took into consideration plaintiff’s back disorder in evaluation his RFC. *Id.*

16 Plaintiff argues the ALJ improperly evaluated the medical evidence of his back  
17 impairment and that this impairment was severe at least as of November 2017, two years after  
18 his alleged onset date and more than one year before the ALJ’s decision. Dkt. 9 at 7. Plaintiff  
19 points to his reports of back pain and examination and imaging findings from throughout the  
20 alleged disability period, including his reports of increased pain with diminished strength in his  
21 lower extremities beginning in November 2017 and the July 2018 MRI showing multilevel  
22 degenerative changes. Dkt. 19 at 9.

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<sup>1</sup> The ALJ’s decision is dated December 27, 2018.

1 The Commissioner responds the ALJ reasonably concluded that plaintiff's spinal  
2 condition did not significantly impair his ability to perform basic work activities and was thus  
3 non-severe. Dkt. 20 at 3. The Commissioner further asserts that even if the ALJ erred in finding  
4 plaintiff's back impairment not severe, any error was harmless for two reasons: first because the  
5 ALJ resolved step two in plaintiff's favor and considered the limitations caused by plaintiff's  
6 back impairment later in the sequential evaluation, and second because plaintiff has not  
7 identified any limitations stemming from his spinal condition that preclude him from performing  
8 the jobs identified at step five. *Id* at 3-4.

9 The ALJ required plaintiff to show that his spinal impairment "seriously" impacted his  
10 ability to engage in basic work activities, rather than evaluating whether his back impairment had  
11 more than a minimal effect on his ability to work. *Smolen*, 80 F.3d at 1290. The ALJ thus  
12 improperly imposed a stricter requirement than the *de minimis* screening device step two is  
13 intended to be. *Id*. Plaintiff's complaints, the examination results, and imaging findings meet the  
14 threshold of having more than a minimal impact on his functioning. The ALJ's own RFC  
15 finding, limiting plaintiff to medium work with postural and environmental restrictions due to his  
16 back impairment, demonstrates as much. Plaintiff's claim of a severe back impairment cannot be  
17 said to be groundless. The ALJ erred in finding it to be so.

18 However, the Court must assess whether this error was harmless. An error is harmless  
19 only if it is inconsequential to the ALJ's ultimate nondisability determination. *Molina v. Astrue*,  
20 674 F.3d 1104, 1122 (9th Cir. 2012). As the Commissioner points out, the ALJ considered the  
21 issue of plaintiff's back impairment at the remaining steps of the decision and included  
22 limitations resulting from this impairment in the RFC finding. However, the ALJ relied on  
23 opinion of consulting doctor Debra Baylor, M.D., and examining doctor Gary Gaffield, D.O. Tr.

1 24. Dr. Baylor reviewed the record in July 2017, and Dr. Gaffield examined plaintiff in April  
2 2017, both of which occurred before plaintiff began reporting worsening symptoms and the MRI  
3 documented significant degenerative changes. These doctors' opinions alone therefore did not  
4 provide a complete or accurate picture of plaintiff's functioning throughout the relevant period.  
5 Although the ALJ may have accurately assessed plaintiff's functioning in the period before his  
6 back impairment worsened, the ALJ's failure to evaluate the changing nature of plaintiff's  
7 impairment means the error was not harmless.

8 In addition, the Commissioner's assertion that plaintiff failed to identify any limitations  
9 that would preclude him from performing the jobs identified at step five ignores the  
10 Commissioner's own concession, discussed below, that the ALJ's error in evaluating the  
11 consulting psychologists' opinion eliminated all the jobs the VE identified except for nighttime  
12 housekeeper. Dkt. 20 at 6-7. The Court cannot say that if the ALJ had properly assessed  
13 plaintiff's spinal condition throughout the disability period, it would have resulted in an RFC  
14 finding that allowed him to perform that job, which requires medium-level work. The ALJ's  
15 error in assessing plaintiff's back impairment was therefore not harmless.

16 Accordingly, the ALJ's decision is reversed and this case remanded for further  
17 administrative proceedings. Because the Court is remanding for further administrative  
18 proceedings at step two, the Court need not decide the remaining issues plaintiff presents.  
19 Nevertheless, the Court will address them as needed to ensure any errors are addressed on  
20 remand.

21 **B. Consulting psychologists' opinions**

22 Plaintiff argues that the ALJ erred by rejecting a portion of the consulting psychologists'  
23 opinions without explanation. Dkt. 19 at 3. The consulting psychologists opined that plaintiff

1 would be able to “complete routine tasks not in close proximity to others over a normal 8-hour  
2 workday with customary breaks” and that he would be able to “interact for brief periods with  
3 others in a work setting and accept supervision.” Tr. 210-11, 230. The ALJ gave great weight to  
4 these opinions. Tr. 25. The ALJ found, however, that plaintiff had the residual functional  
5 capacity to work in proximity to co-workers but not in a cooperative or team effort, and he  
6 required a work environment with no more than superficial interactions with co-workers and  
7 without public contact. Tr. 20. The ALJ gave no explanation for this discrepancy.

8 Plaintiff argues that the ALJ erred by concluding that plaintiff could work in proximity to  
9 others without giving a reason for rejecting these opinions. Dkt. 19 at 5. Plaintiff asserts that this  
10 error is not harmless because the vocational expert did not testify that an individual who was  
11 unable to work in close proximity to others could perform the jobs she identified. *Id* at 6.

12 The Commissioner acknowledges that this omission appears to be an error but asserts that  
13 this error was harmless. Dkt. 20 at 6-7. The Commissioner argues that the VE testified that one  
14 of the jobs she identified, night housekeeper, is performed during night hours when no one else is  
15 present, and this job exists in significant numbers in the national economy, making the ALJ’s  
16 error here harmless. Dkt. 20 at 6.

17 Although the Court need not determine whether this omission was harmful in light of the  
18 remand at step two, the Court directs the ALJ on remand to either incorporate this portion of the  
19 opinion into the new RFC finding or give valid reasons for discounting it.

20 **B. Dr. Gaffield’s opinion**

21 Plaintiff argues that the ALJ erred by rejecting a portion of Dr. Gaffield’s opinion  
22 without explanation. Dkt. 19 at 6. Dr. Gaffield opined that plaintiff could perform postural  
23 activities only occasionally. Tr. 609. The ALJ generally gave Dr. Gaffield’s opinion great weight

1 but found that plaintiff had the ability to frequently perform postural activities. Tr. 20, 25.  
2 Plaintiff acknowledges that the error is harmless if it is the only error found but asserts that it is  
3 significant because one of the jobs the ALJ identified, industrial cleaner, requires greater postural  
4 activities greater than the Dr. Gaffield's opinion. Dkt. 19 at 6. The Court directs the ALJ to  
5 address this discrepancy as part of the reevaluation of Dr. Gaffield's opinion on remand.

6 **D. Dr. Czysz**

7 Plaintiff argues that the ALJ erred in rejecting the opinion of Dr. Czysz. Dkt. 19 at 10.  
8 Dr. Czysz examined plaintiff in October 2016 and opined that he would have moderate or  
9 marked limitations in numerous areas of mental functioning and that he was markedly limited  
10 overall. Tr. 543-46. The ALJ gave this opinion slight weight, finding that it was not supported by  
11 the longitudinal record, plaintiff's statements to his treating physicians, and his activities of daily  
12 living. Tr. 25. The ALJ also found that Dr. Czysz based his opinion solely on his one-time  
13 examination and he was therefore not a reliable source for plaintiff's long-term mental  
14 functioning. Tr.26. Finally, the ALJ found that Dr. Czysz's opinion was predicated on plaintiff's  
15 self-report, which the ALJ found to be not a reliable indication of his mental functioning, and  
16 was for the purposes of qualifying plaintiff for state benefits and not a true estimation of  
17 plaintiff's maximum residual functional capacity. *Id.*

18 Although the Court need not determine whether the ALJ committed harmful error in  
19 evaluating Dr. Czysz's opinion, the Court will note that at least two of the reasons the ALJ gave  
20 for discounting the opinion are invalid. First, an ALJ does not provide adequate reasons for  
21 rejecting an examining doctor's opinion by questioning the credibility of the patient's complaints  
22 where the doctor does not discredit those complaints and supports his ultimate opinion with his  
23 own observations. *Edlund v. Massanari*, 253 F.3d 1152, 1159 (9th Cir. 2001). Dr. Czysz did not

1 question plaintiff's complaints. To the contrary, Dr. Czysz administered the Rey 15 item memory  
2 test, a dissimulation screening task, and found that the results suggested adequate effort. Tr. 547.  
3 And Dr. Czysz conducted a thorough clinical examination in support of his opinion. The ALJ's  
4 assessment of plaintiff's statements to Dr. Czysz was not a valid reason to discount the opinion.

5 Second, the mere fact that an evaluation was for purposes of determining eligibility for  
6 benefits does not invalidate that opinion. There is nothing to indicate that Dr. Czysz purposefully  
7 slanted his evaluation in an attempt to ensure plaintiff qualified for state benefits, or that instead  
8 of giving his professional opinion based on his clinical evaluation, he gave a false estimation of  
9 plaintiff's abilities, as the ALJ implies. Without actual evidence that Dr. Czysz gave anything  
10 other than his professional opinion based on his clinical assessment, this was not a valid reason  
11 to reject the opinion. The ALJ shall reevaluate Dr. Czysz's opinion on remand and should take  
12 care not to repeat these errors.

### 13 CONCLUSION

14 For the foregoing reasons, the Commissioner's decision is **REVERSED** and this case is  
15 **REMANDED** for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).  
16 On remand, the ALJ shall reevaluate plaintiff's back impairment at step two of the five-step  
17 disability evaluation process. The ALJ shall further develop the record and redo the remainder of  
18 the five-step disability evaluation process in accordance with this decision and as the ALJ deems  
19 necessary and appropriate to make a new decision.

20 DATED this 13<sup>th</sup> day of October, 2020.

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23 BRIAN A. TSUCHIDA  
Chief United States Magistrate Judge